2ND Quarter
INDUSTRY UPDATE

Retirement Plan Industry Update: 2ND Quarter 2020

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Coronavirus Aid, Relief, and Economic Security Act (CARES) - Update

On March 27, 2020, Congress overwhelmingly passed, and the President signed, the CARES Act. This fiscal stimulus package was designed to help businesses and families get thorough the unprecedented impact of the coronavirus (COVID-19). The Act also provided enhanced distribution and loan options for affected retirement plan participants.

Following the original guidance on who met the criteria of a "qualified individual," the IRS issued additional guidance which clarified and expanded the list of who can qualify for taking a coronavirus-related distribution and/or loan. Bolded below are the changes to the original guidance:

- Is diagnosed with COVID-19 by a CDC-approved test or whose spouse or dependent was so diagnosed, or
- Due to COVID-19, experiences adverse financial consequences **or whose spouse or member of the household experiences adverse financial consequences** as a result of:
    - Being quarantined, furloughed, laid off, or having work hours reduced
    - Being unable to work due to lack of childcare
    - **Having a reduction in pay (or self-employment income)**
    - **Having a job offer rescinded or start date for a job delayed**
    - Closing or reducing of hours of a business that one owns or operates
    - Other factors determined by the Treasury Department

    *** A member of the individual's household is someone who shares the individual's principal residence.**

(IRS, 2020)

Retirement Plan Participants Remain Calm During the Recent Stock Market Volatility and Impact of COVID-19

Portfolio Evaluations, Inc. surveyed a number of leading recordkeepers and found that **70% of plan sponsors** adopted the coronavirus related distribution (CRD) provision, allowing "qualified individuals" to take a distribution of up to $100,000 of their vested account balance from their retirement plan. It reported that **47% of plan sponsors** adopted the coronavirus related loan (CRL) provision that allows a participant to borrow up to $100,000. Portfolio Evaluations, Inc. also found that that the majority of plan sponsors (71%) are allowing participants to suspend their loan payments through the end of 2020.

T. Rowe Price reported that participant usage of CRDs was very low, with an average of 1.7% of participants initiating a distribution. It reported that industries hardest hit by COVID-19 (e.g., leisure and hospitality, retail trade, transportation) saw the largest usage, ranging from 3–7% of participants taking a CRD.

T. Rowe Price reported that only 1.2% of participants have taken a CRL.

In recently released research, The CARES ACT: One Month Later, Vanguard reported that only 0.9% of participants had initiated a CRD and less than 0.1% of participants initiated a loan based on the expanded loan limits. Vanguard did report that only 2% of participants with an existing loan requested to delay repayments for a year.

(Portfolio Evaluations, Inc., 2020) (The Vanguard Group, Inc., 2020)

Department of Labor Provides a Safe Harbor for Electronic Disclosure

On July 27, 2020, the Department of Labor's (DOL) safe harbor for electronic disclosure rule goes into effect. Historically, plan sponsors have been required to provide hard copies of many disclosure notices to all eligible participants annually.

If certain conditions are met, electronic delivery can become the default.

HOW IT WORKS

1. The plan sponsor collects email addresses for all eligible plan participants.
   - Electronic addresses can be employer provided if used for other employment related purposes.

2. The plan sponsor (or designee) sends an initial paper notice containing required information.
   - The notice must be individualized and include the electronic address for each recipient.
   - The safe harbor permits two methods for electronic delivery:
     - Direct delivery by email: After sending the initial paper notice, covered documents can be sent directly by email or smart phone to eligible participants via an attachment or in the content.
     - Notice and access on a website: After sending an initial paper notice, covered documents can be posted on a website. In order to post required disclosures to a website, a notice of internet availability (NOIA) must be furnished for each covered document and must be sent to the electronic address identified in the initial paper notice. Each required notice posted on the website must be maintained on the website for one year or until superseded.

Covered documents include:

- Summary plan description (SPD)
- Participant disclosure notices – safe harbor, QDIA, auto enrollment, participant fee disclosures
- Fund action notices

PARTICIPANT PROTECTIONS

- Participants must be notified of their right to receive paper delivery of the individual notices at no cost
- The plan sponsor (or designee) must monitor receipt of the NOIA and take steps to remedy "bounce backs" or switch to paper delivery
  - If employer-provided electronic addresses are used, the plan sponsor must take steps to update the electronic address for terminated participants or switch to paper delivery

(Fidelity Investments Institutional Operations Company LLC, 2020)

The Department of Labor Issues New Guidance on ESG Investments

On June 23, 2020, the DOL issued a 62-page document clarifying its position on offering socially responsible investments in Employee Retirement Income and Security Act (ERISA) covered retirement plans. A summary of the proposed rule states that the objective of the document is "to confirm that ERISA requires plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action". The Secretary of Labor, Eugene Scalia added that "private employer-sponsored retirement plans are not vehicles for furthering social goals or policy objectives that are not in the financial interest of the plan. Rather, ERISA plans should be managed with unwavering focus on a single, very important social goal: providing for the retirement security of American workers."

In short, the proposed changes will continue to require plan fiduciaries to evaluate an investment solely on its expected risk-adjusted returns and not on "unrelated objectives" (e.g., social causes) that may sacrifice investment returns and/or add additional risk. The proposed rule would permit an investment option that screened for environment, social, and governance (ESG) if the fiduciary used only "objective risk-return criteria" and documented compliance with that requirement.

The deadline for comments on the proposed rule is July 30, 2020.

(Manganaro, 2020) (Employee Benefits Security Administration – Federal Register, 2020)

Private Equity Investments in Defined Contribution Retirement Plans

On June 30, 2020, in response to an inquiry from Pantheon Ventures, the DOL issued an information letter confirming that ERISA does not prohibit participant-directed retirement plans (e.g., 401(k), 403(b)) from offering asset allocation funds (e.g., target date, target risk, balanced funds) that included a private equity allocation. The DOL clearly states that the plan fiduciaries should be aware of some of the differences between private and public equity investments, including the complex nature of a private equity investment, lack of liquidity, fee structure, and difficulty in valuing the investments.

The DOL provides an outline that responsible plan fiduciaries should consider when evaluating the risks and benefits of having a private equity investment in an asset allocated option, including:

- Do the fiduciaries have the skill, knowledge, and experience to evaluate the fund?
- Do the investment managers of the fund have the capabilities, experience, and stability to manage the asset allocation fund that includes private equity?
- How does the inclusion of private equity impact the fund's expected return net of fees?
- How does the fund handle valuation issues?
- Does the fund provide liquidity to permit participants to initiate distributions?
- Is the fund net expense ratio reasonable?

(Campagna, 2020)

MRA ASSOCIATES

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